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ELECTRONICALLY FILED
Superior Court of California,
County of Orange

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Clerk of the Superior Court
By Mary M Johnson, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

SHIRLEY McCracken, KRIS MURRAY, and)
GAIL EASTMAN,)

Petitioners,

v.)

NEAL KELLEY, Orange County Registrar of)
Voters, LINDA N. ANDAL, Anaheim City Clerk,)

Respondents,)

DENIS FITZGERALD,)

Real Party in Interest.)

Case No.: 30-2014-00736041-CU-WM-CJC

Judicial Officer: Unassigned

**PETITION FOR WRIT OF MANDATE AND
INJUNCTIVE RELIEF**

IMMEDIATE ACTION REQUIRED
ELECTION LAW MATTER ENTITLED TO
CALENDAR PREFERENCE
(C.C.P. §35; Elec.Code §13314(a)(3))

Petitioners SHIRLEY McCracken, KRIS MURRAY, and GAIL EASTMAN petition this
court for an alternative writ of mandate and a peremptory writ of mandate, and/or temporary and
permanent injunctive relief, directed to respondent Neal Kelley, Orange County Registrar of Voters,
and to Linda N. Andal, city clerk of the City of Anaheim, and by this verified petition alleges:

I.

FIRST CAUSE OF ACTION

(Petition for Writ of Mandate)

1. Petitioners respectfully requests that this court issue an alternative writ of mandate, and then a peremptory writ of mandate, or an injunction, commanding Respondents to delete the following text from the rebuttal argument submitted by real party in interest Denis Fitzgerald to the ballot argument in favor of a measure to amend the Anaheim city charter to increase the number of council members to six (hereinafter "the Expansion Measure"):

"BACKGROUND FOR REBUTTAL:

"The Disney Corporation has tremendous influence with the City Council. Hundreds of millions of our tax dollars go to benefit Disneyland instead of directly benefiting the people of Anaheim.

"Council members Kris Murray and Gail Eastman, who are seeking re-election on this same ballot, are active members of the Disneyland SOAR Political Committee. Their obvious illegal conflict of interest is not good for Anaheim.

"Curt Pringle, the political lobbyist for Disneyland, wrote the ballot argument against the District Elections Measure. District Elections could significantly reduce the influence Disneyland has with the City Council.

"The Anaheim City Attorney, who is responsible for the questionable 'fine print', was previously employed by Disneyland lobbyist Curt Pringle and the Disneyland Resort District.

"TO CURTAIL THE INFLUENCE OF THE DISNEY CORPORATION:

VOTE YES ON #____, VOTE NO ON #____."

(underlining in the original rebuttal argument)

2. Petitioners Shirley McCracken, Kris Murray, and Gail Eastman are registered voters and residents of the County of Orange and the City of Anaheim. Petitioners Murray and Eastman are also both elected councilmembers of the City of Anaheim, and are referred to by name in the rebuttal argument.

1 3. Respondent Neal Kelley is now and was at all times herein the Registrar of Voters for
2 the County of Orange. He is charged with responsibility for preparing the Voters Pamphlet, which
3 includes arguments in support of and in opposition to measures placed on the ballot by cities in
4 Orange County. Respondent Linda N. Andal is the city clerk of the city of Anaheim, and is
5 responsible for gathering arguments in support of and in opposition to measures placed on the ballot
6 by the City of Anaheim. They are named as respondents pursuant to Elections Code §9295(b)(3).

7 4. Real party in interest Denis Fitzgerald submitted the rebuttal argument that is the
8 subject of this petition. He is named herein pursuant to Elections Code §9295(b)(3).

9 5. The City of Anaheim is a charter city in Orange County. Article XIII of the city charter,
10 commencing at Section 1300, provides for municipal elections. Section 1300 provides that general
11 municipal elections in Anaheim shall be held on the first Tuesday after the first Monday in November
12 of each even-numbered year. Section 1302 provides that all elections shall be held in accordance with
13 the provisions of the Elections Code of the State of California, as the same now exist or hereafter may
14 be amended, for the holding of municipal elections so far as the same are not in conflict with the
15 Charter. The effect of these provisions is to incorporate the provisions of the Elections Code for
16 treatment of the elections, including ballot measures. (Patterson v. Board of Supervisors (2002) 202
17 Cal.App.3d 22).

18 6. The election which is the subject of this petition will be held on November 4, 2014,
19 with the general election.

20 7. The Anaheim city charter currently provides that the City Council in Anaheim consists
21 of four elected Council members and a separately elected Mayor. All amendments to the city charter
22 must be approved by the voters. The City Council voted to place on the November 4 ballot a measure
23 (the Expansion Measure) which would amend the city charter to increase the number of city council
24 members from four plus the mayor, to six plus the mayor. The measure also provides a means and a
25 timetable for implementing the measure. There is also a measure on the ballot for Anaheim to provide
26 that councilmembers will be elected by district rather than at-large. At such time as all the cities in
27 Orange County have submitted measures for the ballot, the Orange County Registrar of Voters will
28 provide final alphabetical designations for the November ballot.

1 8. Pursuant to Elections Code §9280 through §9285, city clerk Linda N. Andal provided
2 a time period for the filing of arguments for and against the Expansion Measure. Tom Tait, the
3 current mayor of Anaheim, filed an argument in favor of the Expansion Measure. Real party in
4 interest Denis Fitzgerald filed an argument in opposition to the Expansion Measure. Pursuant to
5 Elections Code §9285, city clerk Andal provided to the authors of the arguments the other argument
6 and provided them an opportunity to submit rebuttal arguments.

7 9. Fitzgerald submitted a rebuttal argument which contains the language set forth in
8 Paragraph 1 above.

9 10. Elections Code §9295 governs arguments for and against municipal measures. It
10 restricts information in the voter pamphlet to material which is neither false, misleading nor
11 inconsistent with the purpose of the Elections Code provisions. Fitzgerald's rebuttal argument
12 violates these restrictions, for the reasons that follow.

13 11. Fitzgerald's rebuttal argument contains an *ad hominem* attack on the Disney corporation
14 and several political officials, without addressing the merits of the measure.

15 12. The statement that Kris Murray and Gail Eastman are active members of the Disneyland
16 SOAR Political Committee is false. There is nothing called the Disneyland SOAR Political
17 Committee. There is a political action commission that is operated by the entity with the name
18 SOAR. Murray and Eastman are not and never have been members of the SOAR political action
19 committee or any political action committee of any similar name. Fitzgerald's statement is completely
20 false.

21 13. The statement that Murray and Eastman have engaged in "obvious illegal conflict of
22 interest" is false. This is a bald accusation of criminal wrongdoing without any basis in fact. Such *ad*
23 *hominem* attacks on city council members is irrelevant to the ballot measure and misleading to the
24 voters.

25 14. The personal attacks on Murray and Eastman are also inconsistent with the purpose of the
26 ballot pamphlet. Murray and Eastman are candidates for reelection to the Anaheim City Council.
27 Fitzgerald has taken out nominating papers to run for the position of mayor of Anaheim. Under the
28 Elections Code, no candidate can use the ballot pamphlet and the candidate statement to attack any

1 other candidate. Elections Code §13308 provides in part: ". . . any candidate's statement submitted
2 pursuant to Section 13307 shall be limited to a recitation of the candidate's own personal background
3 and qualifications and shall not in any way make reference to other candidates for that office or to
4 another candidate's qualifications, character, or activities...". Fitzgerald cannot avoid this restriction
5 by attacking other candidates through the guise of a ballot argument on city measures. Fitzgerald
6 tried this same tactic in 2010 when he ran for mayor of Anaheim, and attempted to use ballot
7 arguments related to traffic tickets and the design build method of public works to attack another
8 candidate. A lawsuit was filed against Fitzgerald and he withdrew his ballot arguments (Tait v.
9 Andal, et.al, Fitzgerald, Real Party in Interest, Orange County Superior Court Case No. 30-2010-
10 00399338). Now Fitzgerald is trying the same tactic of borrowing a ballot measure to make personal
11 attacks on incumbents and candidates he dislikes.

12 15. The statement in the rebuttal argument that Curt Pringle is a political lobbyist for
13 Disneyland is false. Pringle was the mayor of Anaheim from 2002 to 2010, and has not served as a
14 political lobbyist for Disneyland or the Walt Disney Company.

15 16. The statements about Pringle do not go to the merits of the ballot argument. It is a
16 distraction by attacking a private individual rather than addressing the merits of the measure.

17 17. The final *ad hominem* attack is on the Anaheim city attorney. This too is irrelevant to the
18 merits of the ballot measure.

19 18. Nothing in the rebuttal argument rebuts the actual ballot argument in favor of the
20 Expansion Measure. Fitzgerald filed the argument against the Expansion Measure. That argument is
21 not being challenged, only the rebuttal argument he submitted in response to the argument in favor of
22 the Expansion Measure. The rebuttal argument makes no pretense of attempting to rebut the
23 argument in favor of the Expansion Measure. The rebuttal argument was not an opportunity to make
24 new arguments, but only to rebut. The rebuttal does not rebut, but attempts to raise new attacks which
25 do not address anything found in the argument in favor of the Expansion Measure.

26 19. As a result, Fitzgerald's rebuttal is false, misleading, and inconsistent with the
27 requirements of the Elections Code. The material cited in Paragraph 1 herein should be deleted.

28 20. Elections Code §9295 provides that within the ten days after the election materials are

1 made available for examination, any voter of the jurisdiction in which the election is being held may
2 seek a writ of mandate or an injunction, requiring any or all of the materials to be amended or
3 deleted. The peremptory writ of mandate or an injunction shall be issued upon clear and convincing
4 proof that the material in question is false, misleading, or inconsistent with the requirements of the
5 chapter and that issuance of the writ or injunction will not substantially interfere with the printing or
6 distribution of official election materials as provided by law.

7 21. In this instance, unless respondents are required to strike the false, misleading, and
8 inconsistent portions of the rebuttal argument, as set forth in Paragraph 1, the ballot pamphlet sent to
9 the voters will contain statements which are in violation of the Elections Code and the voters will be
10 misled by the statements in the rebuttal argument.

11 22. Petitioners have no plain, speedy or adequate alternative remedy to the issuance of a writ
12 of mandate. Unless the writ of mandate is immediately granted the election will occur prior to the
13 hearing of this matter, and the voters will suffer injury and be misled. Issuance of the writ at this time
14 will not substantially interfere with the conduct of the election.

15 II.

16 SECOND CAUSE OF ACTION

17 (Injunctive Relief)

18 23. Petitioners refer to Paragraph 1 through 22 of this petition and incorporate them by this
19 reference as though set forth in full herein.

20 24. Elections Code §9295 provides for injunctive relief as an alternative remedy, to enjoin the
21 printing of the ballot pamphlet with false, misleading, or inconsistent material. Such relief is
22 necessary and appropriate in this action.
23

24 WHEREFORE petitioners prays as follows:

25 1. That the court issue an alternative writ, and then a peremptory writ of mandate under
26 the seal of this court commanding Respondents to delete the words cited in Paragraph 1 above from
27 Fitzgerald's rebuttal argument, and enjoining Respondents from submitting or printing the words
28

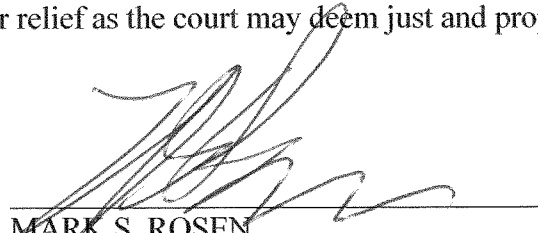
1 cited above in Fitzgerald's rebuttal argument;

2 2. That attorneys fees be awarded petitioners to the extent permitted under law.

3 3. Costs of suit;

4 4. Such other and further relief as the court may deem just and proper.

5
6
7 DATED: July 24, 2014



MARK S. ROSEN
Attorney for Petitioners

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF ORANGE

I have read the foregoing PETITION FOR WRIT OF MANDATE AND INJUNCTIVE RELIEF

and know its contents.

CHECK APPLICABLE PARAGRAPHS

☒ I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am ☐ an Officer ☐ a partner ☐ a of

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. ☐ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. ☐ The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am one of the attorneys for

a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on July 24, 2014, at Santa Ana, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

KRIS MURRAY

Type or Print Name

PROOF OF SERVICE

1013a (3) CCP Revised 5/1/88

Signature

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of, State of California.

I am over the age of 18 and not a party to the within action; my business address is:

On, I served the foregoing document described as

on in this action

☐ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL

☐ *I deposited such envelope in the mail at, California.

The envelope was mailed with postage thereon fully prepaid.

☐ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing.

Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on, at, California.

☐ ****(BY PERSONAL SERVICE)** I delivered such envelope by hand to the offices of the addressee.

Executed on, at, California.

☐ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

**(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

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